

REMARKS

Claims 1-4, 6-10 and 13 are pending.

Claims 3, 6-8, and 10 are withdrawn as being drawn to non-elected species.

The Official Action rejects claims 1, 2, 4, 9 and 13 under 35 USC 103(a) as being unpatentable over the combination of DI PIERRO WO 02/098436 ("DI PIERRO") and ZNAIDEN et al. US 5,523,090 ("ZNAIDEN"). This rejection is respectfully traversed.

The position of the Official Action is that although DI PIERRO does not teach the incorporation of the recited first vasoactive agent visnadin into a composition, ZNAIDEN teaches visnadin as part of the composition, and it would have obvious to one of ordinary skill in the art to combine the ingredients of DI PIERRO and ZNAIDEN because both teach compositions for treating cellulite.

However, the conclusion of the Official Action at page 5 is unclear.

The Official Action first concludes that it would have been obvious to combine BOMBARDELLI and CHO, but the rejection is based on DI PIERRO and ZNAIDEN. Indeed, the Official Action subsequently states the arguments with respect to BOMBARDELLI and CHO , i.e., from the amendment of October 22, 2007, are moot in view of the new rejection based on DI PIERRO and ZNAIDEN. Consideration of the remarks with respect to BOMBARDELLI and CHO

from October 22, 2007 and withdrawal of the rejection are respectfully requested.

The conclusion on page 5 of the Official Actions is further unclear, as it states that the combination is obvious "where no unexpected results are observed", and "the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary." (Emphasis added.)

However, there are unexpected results observed by claimed combination that are already of record. The Examiner's attention is respectfully directed to the Rule 132 Declaration filed May 30, 2007. It is not clear whether the Examiner considered this fact when imposing the rejection.

The declaration compares a gel formulation of the claimed invention comprising the three vasoactive agents to three gel formulations including a single active ingredient, and a single placebo formulation. Each of the gel formulations includes the same excipient base.

The gel formulations are compared for their ability to reduce cellulite in Tables 1 and 2 (e.g. in terms of thigh macrorelief (Rz) and thigh circumference (cm)). The tables demonstrate that the claimed invention (group 5) with all three active ingredients in combination proved more effective in reducing thigh macrorelief and thigh circumference than the formulations based on these ingredients individually (groups 2, 3, and 4). The tables further demonstrate that the three active

ingredients behave synergistically, as the effect of three components together is greater than the sum of the effects of each single component.

The cited publication neither suggest the combination of the claimed active ingredients nor a synergistic effect would result from the combination of claimed active ingredients.

Indeed, DI PIERRO discloses a composition for the treatment of localized adiposities and cellulite, which contains a combination of at least 4 active ingredients (plus one optional):

- a) complex of escin/beta-sitosterol with phospholipids.
 - b) complex of *Gingko biloba* dimeric flavonoids with phospholipids,
 - c) complex of *Centella asiatica* triterpenes with phospholipids,
- and optionally one or both of:
- d) ethylximeninate, and
 - e) standardized *Coleus forskolli* extract.

DI PIERRO requires all of the at least 4 components to obtain the desired effect on cellulite, and there is no mention to any preferred component that alone or in combination with others may produce the same effect. In particular, there is no suggestion that the *Gingko biloba* dimeric flavones complexed with phospholipids and escin beta-sitosterol complexed with phospholipids in combination with another vasoactive component

would result in a synergistic anti-cellulite effect as demonstrated in the declaration. Indeed, there is not even a suggestion to select these two particular active ingredients of the four active ingredients disclosed for combination with any other vasoactive components in order to prepare an alternative anti-cellulite composition as claimed.

ZNAIDEN teaches a skin treatment composition containing an alpha hydroxy acid and/or an inositol phosphoric acid in combination with a xanthine. Visnadin is indicated as one of the many optional ingredients that may be present in the cosmetic composition. See, e.g., column 6, lines 54-55 and column 7, line 13. However, the overall teaching of ZNAIDEN is that visnadin, as well as other optional ingredients, is not identified as having the anti-cellulite effect.

Accordingly, one of ordinary skill in art faced with the problem of finding an effective anti-cellulite composition alternative to that disclosed in ZNAIDEN would not have seriously contemplated using visnadin, which is identified as an optional component that is not essential for obtaining the anti-cellulite effect.

Thus, ZNAIDEN also fails to suggest a synergistic anti-cellulite effect would be achieved by combining visnadin with two of the four anti-cellulite active ingredients of DI PIERRO, e.g., *Ginkgo biloba* dimeric flavones complexed with phospholipids and escin beta-sitosterol complexed with phospholipids.

Therefore, the proposed combination fails to render obvious the claimed invention, as there is (1) no recognition that visnadin provides an anti-cellulite effect and (2) that the combination of the three vasoactive ingredients, which includes visnadin, results in a synergistic anti-cellulite effect.

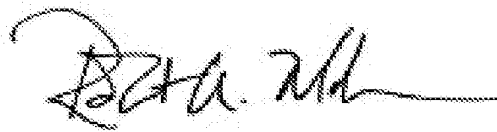
Withdrawal of the rejection is respectfully requested.

In view of the foregoing Remarks, the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

A handwritten signature in dark ink, appearing to read "R.A. Madsen", with a long horizontal flourish extending to the right.

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